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Cynthia L. Foulke
NATIONAL STARCH AND CHEMICAL COMPANY
10 Finderne Avenue
Bridgewater, NJ 08807-0500

EXAMINER

MULLIS, JEFFREY C

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1796

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/779,505
Filing Date: February 13, 2004
Appellant(s): HE ET AL.

Cynthia L. Foulke
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6-10-09 appealing from the Office action mailed 9-10-08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

US patent application Serial numbers 10/779,420 and 10/779,492.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection on the grounds of obviousness type double patenting over 10/779,420 is hereby withdrawn as is the rejection of claim 10 and 11 under 35 USC 103 relying on Kueppers (US 5,939,483). Asahara (US 5,532,319) is no longer relied upon.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2005/0020773	Lechat et al.	1-2005
5,939,483	Kueppers	8-1999
5,292,819	Diehl et al.	3-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is unclear in that it recites that the radial copolymer is part diblock despite the fact that a diblock copolymer is not a radial block copolymer as the term is normally used in the art nor as defined by the structure of claim 1. Furthermore it is not clear what the percentage of claim 3 is based on since this is unstated.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lechat et al. (US2005/0020773).

The reference disclose an adhesive composition having 31 % total block copolymer which has about 50% radial block copolymer based on total block copolymer content and having SIB arms of molecular weight 80,125 molecular weight and 69 % tackifier. Note paragraphs 116-118 and the Table in paragraph 118. Note styrene contents of 15-35% in paragraphs 68-69. With re to claim 6, paragraph 116 discloses the presence of two arm radial (i.e. linear block copolymer) which could be viewed as styrene isoprene styrene. With re to claim 11, patentees block copolymers themselves would have at least some elastomeric properties given that diene polymers (as are present in the form of a block in the block copolymers of the reference) are generally elastomeric and articles containing labels such as bottles are generally disposed of after use the articles of the reference can be said to be disposable and elastic.

There are no examples in Lechat of compositions having all of applicants' limitations. However, to arrive at the claimed compositions by selecting from the various disclosures of the reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results, absent any showing of surprising or unexpected results.

Claims 1-4 and 6-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Diehl et al. (US 5,292,819).

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Diehl disclose applicants radial block copolymer compositions in Examples 1-4 of the Table in column 14. Note that waxes may be added at column 15, lines 55-62 and that the material may be used to produce diapers at the paragraph bridging columns 5 and 6. With re to claim 6 it is assumed that at least a very small amount of diarm coupled polymer would be produced by the process given the known inefficiency of coupling of lithium terminated living polymer chains. Addition of polymers is disclosed at column 7, lines 15-26.

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kueppers (US 5,939,483).

Patentees disclose an adhesive composition having as much as 40 % of a block copolymer, compatible polymer, tackifier and wax. Note the abstract. The compatible polymers include the block copolymers of applicants' claim 6 at column 5, lines 30-36. The block copolymers include partially coupled radial copolymers of applicants molecular weight at column 4, lines 25-50.

No specific examples exist having all of applicants combination of materials. However, choice of such would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results given that patentees disclosure lies within the broad ambit of the claims, absent any showing of surprising or unexpected results.

(10) Response to Argument

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With regard to the rejection under 35 USC 112, second paragraph it is true that coupled block copolymers contain uncoupled material as is known in the art. However appellants' claim 3 specifically refers to SIB content of the radial block copolymer "component" in lines 1 and 2. However, a diblock copolymer is not a radial block copolymer as the term is used in the art nor is appellants' "n" value equal to or greater than 3 in such a material.

It is not nor has it ever been the position of the examiner that Lechat discloses any examples of compositions having the combination of all of the limitations of the claims. Paragraph 116 of Lechat has been cited solely to clarify the fact known in the art that the coupling of block copolymer chains results in mixtures of fully coupled and material which is not fully coupled and that linear triblock copolymer (i.e. "two arms material" as set out in paragraph 116 of Lechat) would be expected to result from a process in which diblock copolymers are coupled by those skilled in the art. With regard to the issue of linear triblock copolymer, Lechat discloses that "SIS", (a linear triblock copolymer) may be further added at paragraph 73. Appellants' styrene content overlaps with that of Lechat at paragraph 66. The instant claims are not limited to any particular amount of diblock copolymer. Appellants' amounts of tackifier are disclosed at paragraph 80 of Lechat. Lechat's materials are disclosed to have adhesive properties and be elastomeric at paragraph 9 and therefore reasonably suited for use as an elastic attachment adhesive.

Diehl couples their active chain ended diblock copolymers (with silicon tetrachloride as in Lechat) and as is known in the art as set out above with regard to

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Lechat, such a process results in a mixture of partially and fully coupled materials and linear triblock polystyrene-polydiene-polystyrene copolymer would be expected to be produced along with the fully coupled (four armed) block copolymer.

Appellants' have provided no proof that Kueppers' adhesives have unsuitable viscosity for use as an elastic attachment adhesive (appellants' have not been clear as to whether they believe that Kueppers' viscosities are too high or too low for use as an elastic attachment adhesive either), and in any case viscosity is a function of temperature and appellants' claims are not drawn to a process of using etc such as would be pertinent to use of a particular temperature.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jeffrey Mullis

/Jeffrey C. Mullis/

Primary Examiner, Art Unit 1796

Conferees:

/James J. Seidleck/

Supervisory Patent Examiner, Art Unit 1796

/Benjamin L. Utech/

Primary Examiner

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